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CAN A MURDERER ACQUIRE TITLE BY HIS CRIME AND KEEP IT?

"It is idle to say that the distinction between legal and equitable actions has been wiped out by the modern practice. It is true that all actions must be commenced in the same way . . . and that both kinds of action are triable in the same courts. But the distinction between legal and equitable actions is as fundamental as that between actions *ex contractu* and *ex delicto*, and no legislative fiat can wipe it out."

This statement of Mr. Justice Earl[1] as to the effect of the modern codes of procedure is supported by many similar observations by other judges,[2] and its truth will hardly be questioned by any thoughtful lawyer. The codes have, however, wrought many changes in the old terminology, and have broken away from certain traditions, which served as a constant reminder of the distinction between law and equity. One who seeks equitable relief no longer begins a suit in equity, but an action, and, if successful, obtains not a decree but a judgment. The bill in equity and the declaration at

[1] Gould *v.* Cayuga Bank, 86 N. Y. 75, 83.

[2] See, for example, De Witt *v.* Hays, 2 Cal. 463, 469; Reubens *v.* Joel, 13 N. Y. 488, 493; Matthews *v.* McPherson, 65 N. Ca. 189, 191; Kahn *v.* Old Telegraph Co., 2 Utah, 174, 194; Bonesteel *v.* Bonesteel, 29 Wis. 245, 250.

law have both been replaced by the complaint, or, in some States, the petition. The defendant's pleading is never a plea, but an answer, regardless of the relief sought by the complainant. There are no more chancellors and common law judges; courts of equity and common law courts have disappeared, and there is no further issue of common law reports and chancery reports. In their stead we have simply judges, courts of law and law reports. These changes are commonly thought to have been beneficial. But with the disappearance of the old, every-day terms, which constantly suggested the difference between law and equity, there is danger that the distinction itself may be undervalued or overlooked. In truth, just because of this danger, it is even more important now than it was formerly to emphasize the true significance of the essential and permanent difference between legal and equitable relief. For the distinction between a judgment that the plaintiff recover land, chattels or money, and a judgment that the defendant do or refrain from doing a certain thing, is as vital and far-reaching as ever. In other words, the courts still act sometimes *in rem*, as at common law, and sometimes *in personam*, as in equity.

An excellent illustration of the importance of discriminating between relief *in rem* and relief *in personam* is to be found in the arguments of counsel and the opinions of the judges in dealing with several recent cases, in which one person killed another in order to acquire, by descent or devise, the property of his victim. By a strange chance there have been seven of these cases reported in the last nine years. In four of them the murderer was successful in securing and holding the property; in two others his purpose was defeated, as it would have been in the remaining case, if the complaint had been properly drawn. But in all the cases, with one exception, even in those in which the right result is reached, the reasoning is in the highest degree unsatisfactory.

There are three possible views as to the legal effect of the murder upon the title to the property of the deceased:

1. The legal title does not pass to the murderer as heir or devisee.

2. The legal title passes to the murderer, and he may retain it in spite of his crime.

3. The legal title passes to the murderer, but equity will treat him as a constructive trustee of the title because of the unconscionable mode of its acquisition, and compel him to convey it to the heirs of the deceased, exclusive of the murderer.

Each of these views has been adopted in one or more of the cases. The first view was made the *ratio decidendi* in *Riggs* v. *Palmer*[1] (1889), in *Shellenberger* v. *Ransom*[2] (1891), and in *McKinnon* v. *Lundy*[3] (1893–1895). In *Riggs* v. *Palmer* a lad of sixteen killed his grandfather to prevent the latter from revoking a will in which he was the principal devisee. The words of the New York Statute of Wills are. "No will in writing, except in the cases hereinafter mentioned, nor any part thereof, shall be revoked or altered otherwise," etc. And there is no mention in the statute of the case of the murder of the testator by a beneficiary under the will. In *Shellenberger* v. *Ransom*, a father murdered his daughter that he might inherit her lands, and, being arrested, conveyed his interest in the lands to his attorney to secure his services in defending him. By the Nebraska Statute of Descents: "When any person shall die seized of lands . . . they shall descend in the manner following . . . second . . . if he shall have no issue or widow his estate shall descend to his father."

It seems impossible to justify the reasoning of the court in these cases. In the case of the devise, if the legal title did not pass to the devisee, it must be because the testator's will was revoked by the crime of his grandson. But when the Legislature has enacted that no will shall be revoked except in certain specified modes, by what right can the court declare a will revoked by some other mode? In the case of inheritance, surely, the court cannot lawfully say that the title does not descend, when the statute, the supreme law, says that it shall descend. It is not surprising, therefore, to find that both the New York and the Nebraska courts have abandoned their untenable position.

[1] 115 N. Y. 506. [2] 31 Neb. 61.
[3] 24 Ont. R. 132; 21 Ont. Ap. 560; 24 Can. S. C. R. 650.

In *Ellerson* v. *Westcott*,[1] (1896), it was said that *Riggs* v. *Palmer* must not be interpreted as deciding that the grandfather's will was revoked. On the contrary, the devise took effect and transferred the legal title to the grandson. But the court, acting as a court of equity, compelled the criminal to surrender his ill-gotten title to the other heirs of the deceased. In other words, the third of the three views before stated is now recognized as law in New York.

Upon a rehearing of *Shellenberger* v. *Ransom*,[2] the court pronounced their former opinion erroneous, and finally decided, adopting the second of the three views before stated, that the father and his grantee, although a purchaser with notice, acquired an indefeasible title to the property of his murdered daughter. This second view was adopted also in *Owens* v. *Owens*[3] (1888), where a woman, an accessory before the fact to the murder of her husband, secured her dower; in *Deem* v. *Milliken*[4] (1892), where a son murdered his mother and inherited her property; and in *Carpenter's Estate*[5] (1895), where a son inherited from his father whom he had killed. This view was approved also, extra-judicially, in *Holdom* v. *Ancient Order*[6] (1896). In the light of these authorities the view that the legal title does not pass to the murderer as heir or devisee of his victim, being unsound in principle and unlikely to have

[1] 148 N. Y. 149.

[2] 41 Neb. 631. A short criticism of the reasoning in Riggs *v.* Palmer and Shellenberger *v.* Ransom, on the grounds more fully set forth in this article, appeared in 4 Harv. L. Rev. 394. In a letter to the editors of that Review the counsel for the murderer in the Nebraska case said that his success in obtaining a rehearing was in large measure due to this criticism. Unfortunately the second opinion was more unsatisfactory than the first. For, although both disregarded legal principles, the first was against, while the second was in favor of the murderer.

[3] 100 N. C. 240.

[4] 6 Ohio C. C. 357.

[5] 170 Pa. 203. WILLIAMS, J. dissented, saying: "The son could not by his own felony acquire the property of his father and be protected by the law in the possession of the fruits of his crime."

[6] 159 Ill. 619. See editorial comments to the same effect in this *Review*, Vol. 34, N. S., p. 636; and in 29 C. L. J. 461; 32 C. L. J. 337; 34 C. L. J. 247; 39 C. L. J. 217; 41 C. L. J. 377. But, the statement in 42 C. L. J. 133, of the later New York doctrine without adverse criticism is certainly noticeable.

any following in the future, may be dismissed from further consideration.[1]

The *res*, then, passing to the criminal, we have only to ask whether he may keep it in spite of his crime, or whether, because of his crime, he must surrender it to the other heirs of the deceased. If the first of these alternatives is the correct one, then is our law open to the reproach of permitting the flagrant injustice of an atrocious criminal enriching himself by his crime. If, on the other hand, the second alternative is adopted, it follows that the decisions in Nebraska, North Carolina, Ohio, and Pennsylvania are erroneous. To the writer it seems clear that these decisions are erroneous, and that the error is due to a failure to discriminate between legal and equitable relief. Both counsel and court appear to have assumed that the only question before them was whether the criminal could take the title to the property of his victim—a purely common-law question. One and all overlooked that beneficent principle in our law by which Equity, acting in *personam*, compels one, who, by misconduct has acquired a *res* at common law, to hold the *res* as a constructive trustee for the person wronged, or if he be dead, for his representatives. The true principle is put very clearly by Andrews, C. J., in *Ellerson* v. *Westcott*,[2] the latest of the decisions on the point

[1] As far back as the time of Lord Hale, in King's Attorney *v.* Sands, Freem. C. C. 129, Hardres, 405, 488 s. c., an authority not cited in any of the recent cases, it was taken for granted by counsel and court that the interest of a *cestui que trust* descended to his only brother, who had killed him. The brother being attainted of murder and therefore having no heirs, the trust was claimed by the Crown, as feudal lord. The claim was not allowed, as there was no escheat of equitable interests, but there being no one who could enforce the trust, the trustee, who was the father of the two brothers, held the legal title for his own benefit.

By the civil law, too, as is pointed out by Mr. F. B. Williams, in 8 Harv. L. Rev. 170–171, the legal title passed to the criminal and was afterwards taken from him.

Should the question arise again in Canada, it is highly probable that McKinnon *v.* Lundy, in which a husband killed his wife, who had made her will in his favor, would be supported on the ground that the husband became a constructive trustee for the heirs. The action, as in Riggs *v.* Palmer, was for equitable relief.

[2] 148 N. Y. 149, 154.

under discussion: "The relief which may be obtained against her (the murderess and devisee) is equitable and injunctive. The court in a proper action will, by forbidding the enforcement of a civil right, prevent her from enjoying the fruits of her iniquity. It will not and cannot set aside the will. That is valid, but it will act upon facts arising subsequent to its execution and deprive her of the use of the property." [1]

That there was no mention of this principle in the similar cases that preceded *Ellerson* v. *Westcott* is the more remarkable, because the distinction here insisted upon, that a person may acquire by force of the common law or by a statute a legal title, and yet be deprived of the beneficial interest in the property by reason of his unconscionable conduct in its acquisition, has been repeatedly recognized and enforced.

E. g., If a grantor has executed a deed, knowing its nature, the deed is effective to pass the title at law, even though he was induced to execute it by the fraudulent representations of the grantee. Accordingly, the fraudulent grantee may, in the absence of a statute allowing equitable defences, maintain ejectment against the grantor, the innocent victim of his fraud.[2] But the right of the defrauded grantee to relief in equity was recognized in several of the cases just cited, and also, notably, in *Blackwood* v. *Gregg*,[3] and it is, of course, every day's practice for a court of equity to treat a fraudulent grantee as a constructive trustee.

[1] See the similar remarks of Maclennan, J. A., in McKinnon *v.* Lundy, 21 Ont. App. 560, 567: "One can easily understand that in the case of a murder committed with the very object of getting property of the deceased by will or intestacy, the court could defeat that object, even by taking away from the criminal a legal title acquired by such means; and it may be that the court would go further and take the legal title away, even though the crime were committed without that object."

This view finds further confirmation in the opinion of Fry, L. J., in Cleaver *v.* Mut. Association '92, 1 Q. B. 147, 158. See also 4 Harv. L. Rev. 394; 25 Ir. L. Times, 423; 29 Ir. L. Times, 66; 91 L. Times, 261; 30 Am. L. Rev. 130; 6 Green Bag, 534.

[2] Feret *v.* Hill, 15 C. B. 207; Mordecai *v.* Tankersley, 1 Ala. 100; Thomas *v.* Thomas, 1 Litt. (Ky.) 62; Jackson *v.* Hills, 8 Cow. 290; Osterhout *v.* Shoemaker, 3 Hill, 513; Kahn *v.* Old Tel. Co., 2 Utah, 174; Taylor *v.* King, 6 Munf. 358; Lombard *v.* Cowham, 34 Wis. 486.

[3] Hayes, 277, 303–306.

What is true of fraud is equally true of duress practised by the grantee upon the grantor. The grantee gets the legal title to the *res*, but equity gives the grantor a right in *personam*, and thus makes the grantee a trustee *ex maleficio*. But the grantor's right, being merely equitable, is lost, if the *res* is transferred to a *bona fide* purchaser.[1]

Fraud and force may be practised not only to procure the execution of a conveyance, but also to prevent the making of a conveyance. In such a case the unexecuted intention of the victim of the fraud or force must at common law count for nothing. The legal title must go just as it would, if the owner of the *res* had never intended to convey it. But here, too, equity will see that the wrong doer or anyone claiming under him, except a purchaser for value without notice, does not profit by his wrong, and will compel him to convey the legal title in such manner as to effectuate the defeated intention of his victim. A clear and cogent authority upon this point is Lord Thurlow's decision in *Luttrell* v. *Olmius*, which is thus stated by Lord Eldon, and with his approval, in 11 Ves. 638: "Lord Waltham, tenant in tail, meaning to suffer a recovery, and by will to give real interests to his wife, Mr. Luttrell, who by his marriage had an interest to prevent barring the entail, did by force and management prevent the testator from signing the deed to make the tenant to the *præcipe:* Lord Thurlow's opinion was clear, that though at law Mr. Luttrell's lady was tenant in tail, and, which makes it stronger, she was no party to the transaction, yet neither he nor anyone else could have the benefit of that fraud, and the jury upon an issue directed, having found that the recovery was fraudulently prevented, Lord Thurlow held, even in favor of a volunteer, that the tenant in tail should not take advantage of the iniquitous act, though she was not a party to it; and the estate was considered exactly as if a recovery had been suffered," [2]

[1] 9 Harv. L. Rev. 57, 58.

[2] Lord Eldon, stating this case a second time in 14 Ves. 290, said "Luttrell had, while Lord Waltham was upon his deathbed, engaged in suffering a recovery, prevented it, with the view that the estate should devolve upon the person with whom he was connected (his wife). That estate was by law vested in that individual, a much stronger case, there-

Lord Thurlow applied the same principle in *Dixon* v. *Olmius*,[1] overruling the demurrer of Lord Waltham's heir, who, by several acts of fraud and violence, prevented the republication of his ancestor's will. This case, too, was approved by Lord Eldon, who said in *Middleton* v. *Middleton*:[2] "If a person be fraudently prevented from doing an act, this court will consider it as if that act had been done, as in the case of Lord Waltham's will."

As an heir may by fraud or violence prevent the execution of a will, so a devisee may, by the same means, prevent the revocation of a will. The governing principle in such a case is admirably stated by Boyd, C. J., in *Gaines* v. *Gaines*:[3] "A devisee, who by fraud or force prevents the revocation of a will, may, in a court of equity, be considered as a trustee for those who would be entitled to the estate in case it were revoked; but the question cannot with propriety be made in a case of this kind, where the application is to admit the will to record."[4] The learned reader will at once appreciate the closeness of the analogy between these cases of fraud upon a a testator or ancestor, and the cases where the testator or ancestor was killed. If the heir or devisee who gains the legal title by fraud must hold it as a constructive trustee, *a fortiori*, should the same be true of one who acquires the legal title by a revolting crime.

But there are other instances where a legal title or right has been held to pass by force of a statute to a person notwithstanding his misconduct, but where a court of equity has defeated his unjust scheme by compelling him to surrender the *res* to the person wronged.

fore, than the acquisition of property through imposition. Lord Thurlow . . . had no doubt that it was against conscience that one person should hold a benefit which he had derived through the fraud of another."

[1] 1 Cox Eq. 414.

[2] 1 Jac. & W. 94, 96.

[3] 2 A. K. Marsh, 191.

[4] See to the same effect, Graham *v.* Burch, 53 Minn. 17 (*semble*); Blanchard *v.* Blanchard, 32 Vt. 62 (*semble*); 2 Roberts, Wills (3d Ed.), 31. The decision to the contrary in Kent *v.* Mahaffy, 10 Ohio St. 204, it is submitted, is not to be supported. In Clingan *v.* Mitcheltree, 31 Pa. 25, the equitable aspect of the question was not discussed.

By Statute 7 Anne, c. 20, 91, all unregistered conveyances are to be adjudged fraudulent and void against subsequent purchasers for valuable consideration. In *Doe* v. *Alsopp*,[1] a grantee who failed to register his deed was defendant in an ejectment brought by a second grantee who bought with notice of the prior unregistered conveyance. It was argued for the defendant that the object of the statute was to protect innocent purchasers only, and the court was asked to read into the statute an exception excluding from its operation those who sought to derive from it an unconscionable advantage. But the judges declined to legislate, saying that plainer words could not be used and that sitting in a court of law they were to give effect to them, and suggesting that the defendant's relief must be sought in equity. And courts of equity have regularly given relief in such cases by treating the second grantee as a constructive trustee for the first.[2]

In *Greaves* v. *Tofield*,[3] James L. J. says: "Lord Eldon pointed out that there was no altering the language of the Acts of Parliament, there was no dealing with or in any way repealing the Acts of Parliament directly or indirectly, but giving the acts their full force, that is to say, leaving the estate to go in priority to the man who had registered, still if that man had notice of anything by which his vendor or his grantor had bound himself, he was bound by it.[4]

Again by Mo. Rev. St. § 2689, "The homestead of every housekeeper shall be exempt from attachment and execution." In the singular case of *Fox* v. *Hubbard*,[5] a decree had been made for a sale under foreclosure of a mortgage covering a house and land; before the sale the house was wrongfully removed to an adjoining lot by the owner of this lot, who at once set up housekeeping in the house. The purchaser at the foreclosure sale bought in ignorance of the removal of the house. The

[1] 5 B. & Al. 142.

[2] Le Neve *v.* Le Neve, 1 Ves. 64, Amb. 436, 3 Atk. 646, s. c., approved by Lord Eldon in Davis *v.* Strathmore, 16 Ves. 416, 427.

[3] 14 Ch. Div. 563.

[4] See also 1 Pomeroy, Eq. Jur. §§ 430, 431; 2 W. & T. L. C. in Eq. (Am. Ed.) 214; Britton's App. 45 Pa. 172.

[5] 79 Mo. 390.

house, of course, could not be recovered in specie, for it had become a part of the wrongdoer's realty. It was conceded that the purchaser had an action of tort against the wrong-doer, but the latter was insolvent and insisted on his statutory homestead exemption in his new home. Accordingly, as the court stated, there was no remedy for the purchaser at law. An exception could not be added to the statute, even against a tort-feasor. But giving full effect to the statute, the court decreed that the wrong doer must hold the homestead subject to a lien in equity to the extent of the value of the house removed.

Another illustration is suggested by *Vane* v. *Vane*.[1] The plaintiff was the true owner of certain land, but was led by the fraudulent representations of the defendant to suppose that he was not the owner, and accordingly suffered the defendant to occupy adversely for more than twenty years. This adverse possession cut off the plaintiff's right of entry and action, and by force of the statute, vested the title in the adverse possessor. But the defendant, because of the fraud in securing his statutory title, was required by equity to reconvey the property to the plaintiff. This decision, it should be said, was made under Section 26 of the Statute 3 & 4 Wm. IV. c. 27, which expressly authorized a bill in equity in such a case. But there seems to be no reason why a court of equity might not accomplish the same result without an express statutory provision. Suppose, for example, that the defendant surreptiously took the plaintiff's watch, and has concealed his possession of it from the owner for six years. By force of the statute the defendant's possession is unassailable at common law, and the wrongful possessor has now become the legal owner.[2] But why may not Equity treat him as a trustee? If he had gained the legal title by fraudulently inducing the plaintiff to transfer it to him, he would clearly be a trustee for the plaintiff. What difference can it make to a court of equity whether the legal title came to the defendant through the act

[1] 8 Ch. 383.

[2] 3 Harv. L. Rev. 321, 322.

of the plaintiff, or by operation of law, if in each case he acquired it as the direct consequence of his fraud.[1]

These illustrations, drawn from the misuse of the Statute of Limitations, the Homestead Exemption Statute and the Recording Acts, and from the use of fraud or duress against an ancestor or testator, are obviously governed by the common principle that one shall not be allowed "to enjoy the fruits of his iniquity." Surely murder is iniquity within this principle. Every one must agree with the following statement of Fry, L. J., in *Cleaver* v. *Mutual Association*:[2] "It appears to me that no system of jurisprudence can with reason include amongst the rights, which it enforces, rights directly resulting to the person asserting them from the crime of that person. If no action can arise from fraud, it seems impossible to suppose that it can arise from felony or misdemeanor."

The case from which the remarks of the distinguished Lord Justice are taken, while resembling the American cases where a murderer sought to profit by his crime, suggests certain distinctions. The facts of the case were these: James Maybrick had insured his life in favor of Florence Maybrick, his wife. Mrs. Maybrick was afterwards convicted of the murder of her husband, but the sentence of death was commuted to penal servitude for life. The insurance money was claimed by Mrs. Maybrick's assignee and also by the executors of James Maybrick. The insurance company insisted that the policy was not enforceable by either claimant. Under St. 45 & 46 Vict. c. 75, § 11, James Maybrick was made a trustee of the

[1] There are many conflicting decisions upon the question whether a fraudulent concealment of a cause of action in contract or tort for damages, will suspend the running of the Statute of Limitations. This conflict is surprising, in view of the explicit words of the Statute: "No action shall be brought unless within six (or other fixed number of) years." But here, too, though the right on the old cause of action at law is barred, equity might well give relief. By fraudulently barring the plaintiff's action, the defendant would unjustly enrich himself by keeping for himself what he ought to have paid to the plaintiff. A court of equity should not hesitate to make the defendant surrender this unjust enrichment to the plaintiff. The case would seem to fall within the general principle of quasi-contracts.

[2] 1892, 1 Q. B. 147.

policy for his wife. But this statute also provided that the moneys payable under the policy should not, " so long as any object of the trust remains unperformed, form part of the estate of the insured." The wife, therefore, was not the sole *cestui que trust* of the policy. As the court said, it was a necessary implication, that, if the wife died before her husband, the insurance money would form part of his estate. The court decided, first, that it was against public policy for Mrs. Maybrick, or her assignee, to enforce the trust because of her crime; and, secondly, that under the statute the result must be the same whether the performance of the trust for the wife was rendered impossible by her premature death or by public policy. In either case the contingent resulting trust in favor of the insured took effect, and therefore the executors of James Maybrick were entitled to the moneys payable under the policy.

The judges intimated that their decision would have been the same, even in the absence of any statute. Mrs. Maybrick would not then have been a *cestui que trust* of the policy, nor, as payee in a contract between the insurer and the insured, would she have had any valid claim under the policy. For, by the English law, only the promisee has rights under a contract, even though it purports to be for the benefit of a third person. In many of the states in this country, on the other hand, the interest in a life insurance policy is vested exclusively and irrevocably in the beneficiary, passing to his representative, if he die in the lifetime of the insured, and enforceable by the beneficiary or his representative by an action at law. How, in one of these states, are the rights of the parties to be adjusted, if the beneficiary killed the insured? The criminal beneficiary would, doubtless, be precluded from recovering the insurance money by the same principle of public policy that defeated the claim of Mrs. Maybrick. On the other hand, it is difficult to find any warrant for saying that the amount of the policy forms part of the estate of the insured. The latter has no contingent resulting interest in the policy. The interest of the beneficiary may have arisen by the gift of the insured, but the gift was complete and irrevocable,

and the conclusion seems inevitable that the insurer is relieved of all liability.

The necessity of a similar conclusion will be more apparent in another case that may be put. The payee of a negotiable note, payable ten days after the death of the maker's father, indorses it to A. for value. The indorsee kills the father. As before, public policy prevents a recovery by the criminal against the maker or indorser. And surely the payee, who has already had the value of the note from the indorsee, cannot receive it again from the maker. The latter profits, not by any merit of his own, but, as obligors frequently profit, by the application of the maxim, *Ex turpi causa non oritur actio.*

With the instances just considered may be contrasted another possible case, suggested by Lord Justice Fry's opinion in the Maybrick case. Suppose land is sold to B. and C., and the conveyance made to B. for life, with remainder in fee to C. C. kills B. How will the murder affect the rights of the parties in the property? B.'s life estate being terminated by his death, C. becomes at law the absolute owner of the land. Will Equity make him hold his fee simple as a constructive trustee? If so, for whom? Certainly not for the seller, for he, having received the price of the land, has no concern with its subsequent history. Nor should C. be made a constructive trustee of the entire estate for the benefit of B.; for that would make C. forfeit his remainder which he acquired independently of his crime. It is not the function of Equity to administer the penal law, but to secure restitution to a person wronged, by compelling the wrongdoer to give up the profits of his misconduct. In the case supposed, C. took from B. no more than the enjoyment of the estate during the years he might have lived but for C.'s crime. This, being the measure of C.'s unjust enrichment, should also be the extent of the constructive trust against him. Perfect restitution in such a case is obviously impossible, both because B. is dead and because it is impossible to know how long he would have lived. We must be content with the closest possible approximation to complete justice. As restitution cannot be made to B., it must be made to him who, in matters of property, stands in his place—that is, his heir.

And the amount of the restitution must be determined by estimating, according to the tables of mortality, how many years a person of B.'s age would probably have lived. For the period thus ascertained equity would require C. to hold the land as a constructive trustee for B.'s heir.

Similar reasoning would be applicable if land bought by B. and C. had been conveyed to them as joint tenants in fee simple, and C. were then to murder B. Each joint tenant has a vested interest in a moiety of the land so long as he lives, and a contingent right to the whole upon surviving his fellow. The vested interest of C., the murderer, cannot be taken from him even by a court of equity. But C. having by his crime taken away, B.'s vested interest must hold that as a constructive trustee for the heir of B.; and, it being impossible to know which of the two would have outlived the other, equity would doubtless give the innocent victim the benefit of the doubt, as against the wrong doer who had deprived him of his chance of survivorship, and accordingly give the entire equitable interest to B.'s heir upon C.'s death.

The results reached in these cases must commend themselves to everyone's sense of justice. But all will admit that these results could not be accomplished by common-law principles alone. The common law would make the criminal remainderman in the one case, and the criminal joint tenant in the other case, the absolute owner of the land. Equity alone, by acting in *personam*, can compel the criminal to surrender what, in spite of his crime, the common law has suffered him to acquire. It is much to be regretted that counsel did not invoke, and that the courts of Nebraska, North Carolina, Ohio and Pennsylvania did not apply, in the cases recently before them, the sound principle of equity, that a murderer or other wrong doer shall not enrich himself by his iniquity at the expense of an innocent person.

James Barr Ames.

Cambridge, April 15, 1897.